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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,218	09/28/2001	John David Tucker	KCC-15,529	7138
35844	7590	01/05/2004	EXAMINER	
PAULEY PETERSEN KINNE & ERICKSON 2800 WEST HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195			TRAN, THAO T	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/967,218	TUCKER ET AL.	
	Examiner	Art Unit	
	Thao T. Tran	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 17, 2003 has been entered.
2. Claims 1-23 are currently pending in this application.

Claim Objections

3. Claims 2-3 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 2-3 recite the textile fiber comprising about 2-15% and about 3-10% by weight of the impact modifier, whereas claim 1 recites about 0.59-4% by weight of the impact modifier. The ranges recited in claims 2-3 overlap, but do not further limit the range in claim 1.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 contains the newly added limitations “ethylene-propylene monomer” and “ethylene-propylene rubber” that are considered new matters because they are not disclosed in the specification as originally presented.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-5, 8-13, and 16-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Tucker (US Pat. 6,638,636).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Tucker teaches a fiber, comprising a breathable, multilayered film of which the skin layer comprises a blend of a first polymer, a second polymer, and an impact modifier (compatibilizer) (see abstract; col. 9, ln. 33-37).

In regards to claims 1-2, 3-4, 12, and 20-22, Tucker further teaches the first polymer to be polypropylene and the impact modifier to be styrene-poly(ethylene-propylene)-styrene or ethylene-propylene-diene monomer (see col. 10, ln. 21; col. 11, ln. 28-29, 66-67). Tucker further teaches the impact modifier to be about 1% to about 3%, about 1% to about 10%, or about 1% to about 15% (see col. 9, ln. 58-67).

In regards to claims 5, 10-11, 13, 18-19, and 23, Tucker teaches the fibers being used to form spunbond, nonwoven, and absorbent fibers (see col. 13, ln. 41-44; col. 14; ln. 44; col. 15, ln. 53-55).

In regards to claims 8-9 and 16-17, Tucker is silent with respect to the fibers being formed into knit or woven fabric. However, the reference teaches the use of the fibers to make garments such as clothes, gloves, socks, and the like (see col. 44-46). Hence, Tucker's products would have inherently included knit and woven fabric.

8. Claims 1-6, 10-14, and 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Collier, IV et al. (US Pat. 5,288,791).

Collier teaches a web of fibers, each fiber comprising a blend of a polyolefin and elastomeric block copolymer mixture (see abstract; col. 4, ln. 10-25).

In regards to claims 1-4, 12, and 20-22, Collier teaches the polyolefin to be polypropylene, and the elastomeric block copolymers to be a mixture of styrene-poly(ethylene-

propylene)-styrene and styrene-poly(ethylene-butylene)-styrene. Collier further teaches the blend comprising about 80% of the elastomeric block copolymers, in which 40 parts would be styrene-poly(ethylene-propylene)-styrene, giving an amount of about 3.2% of styrene-poly(ethylene-propylene)-styrene in the blend (see col. 4, ln. 55-66; col. 7, ln. 41-44); which reads upon the instantly claimed ranges.

Note: although Collier does not use the term “impact modifier”, the reference teaches the same polymer, styrene-poly(ethylene-propylene)-styrene, used in the fiber, the polymer would be considered an impact modifier.

In regards to claims 5-6, 10-11, 13-14, 18-19, and 23, Collier teaches the fibers to be formed into spunbond, staple, nonwoven, and absorbent fibers (see col. 5, ln. 3-4; col. 13, ln. 33-40).

9. Claims 1-5, 7, 9-10, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogale et al. (US Pat. 5,346,756).

Ogale teaches a nonwoven textile material, comprising fibers; each fiber comprising a blend of polypropylene and various amounts of ethylene-propylene copolymer with optionally minor amounts of a diene (see abstract; col. 1, ln. 34-41, ln. 64 bridging col. 2, ln. 12; Examples 1-2).

In regards to claims 1-3 and 20-22, Ogale teaches the amount of ethylene-propylene copolymer to be 1% (20% x 50%) (see col. 2, ln. 35-37, Examples 1-2) or 10% (see col. 2, ln. 26-28), which reads on the instantly claimed ranges.

In regards to claim 4, Ogale teaches the use of ethylene-propylene-diene monomer (see col. 2, ln. 8-11; col. 4, ln. 51-53).

In regards to claims 5, 7, 9-10, Ogale teaches the textile fibers being formed into spunbond fibers, yarn, woven and nonwoven textile materials (see col. 1, ln. 12-17; col. 12, ln. 47-50).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 7, 9, 15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collier as applied to claims 1 and 12 above, further in view of Ogale.

Collier is as set forth in claims 1 and 12 above and incorporated herein.

Collier does not teach a yarn or a woven fabric comprising the fibers.

Ogale teaches spunbond fibers, yarn, woven and nonwoven textile materials being formed from fibers comprising polypropylene and an impact modifier (ethylene-propylene copolymer) (see col. 1, ln. 12-17; col. 12, ln. 47-50).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used the fibers of Collier in forming yarn or woven fabric. This is because Applicants have not disclosed that the products formed by the fibers are critical in the invention; and Ogale teaches that the same fibers would be used in forming yarns and woven fibers; as equally well as forming spunbond, staple, and absorbent fibers.

12. Claims 6, 11, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogale as applied to claims 1 and 20 above, further in view of Collier.

Ogale is as set forth in claims 1 and 20 above and incorporated herein.

Ogale is silent with respect to the textile fibers being formed into a staple fiber or an absorbent article.

Collier teaches staple and absorbent fibers, as well as spunbond and nonwoven fibers being formed from a fiber comprising polypropylene and an impact modifier styrene-poly(ethylene-propylene)-styrene (see col. 5, ln. 3-4; col. 13, ln. 33-40).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used the fibers of Ogale in forming staple and absorbent fibers. This is because Applicants have not disclosed that the products formed by the fibers are critical in the invention; and Collier teaches that the same fibers would be used in forming staple and absorbent fibers; as equally well as forming spunbond fibers, yarns, woven and nonwoven materials.

Response to Arguments

13. Applicant's arguments filed on May 30, 2003 have been fully considered but they are not persuasive.

Applicants have amended claim 1 to include ethylene-propylene monomer (EPM) and ethylene-propylene rubber (EPR), in addition to EPDM, to fully recite the class of materials often referred to collectively as EPDM. However, Applicants are reminded that although EPM and EPR belong to the same class of materials as EPDM, these polymers are not disclosed in the

specification as originally presented. Since these chemical species are not in the specification as originally presented, they are considered new matters.

With respect to the remark that claim 1 now recites a far less amount of an impact modifier, it is pointed out in paragraph 10 above that the amount of the ethylene propylene copolymer does read on the instantly claimed range.

Applicants further point out that the olefin polymer material taught by Ogale is not EPDM because the reference teaches sequential polymerization of more than just ethylene, propylene, and a diene. Ogale does teach sequential polymerization. However, the reference specifically discloses that in sequential polymerization, the propylene polymer is formed in one stage while the olefin polymer in another stage (see col. 9, ln. 64-66) and that the order of the sequence is not critical (see col. 7, ln. 45-48). Therefore, the polymers are not formed at the same time; and the olefin polymer in the presence of a Ziegler-Natta catalyst system would form EPDM, whether in the first or second stage.

Contact Information

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Thao Tran

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December 11, 2003